

**United States Department of Labor
Employees' Compensation Appeals Board**

D.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
CLEMENT J. ZABLOCKI VETERANS
AFFAIRS MEDICAL CENTER, Milwaukee, WI,
Employer**

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) **Docket No. 22-0109**
) **Issued: May 17, 2022**
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Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 1, 2021 appellant, through counsel, filed a timely appeal from an August 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 26, 2021 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of the claim to include additional right shoulder conditions as causally related to her June 16, 2020 employment injury; and (2) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 1, 2020.

FACTUAL HISTORY

On June 22, 2020 appellant, then a 49-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2020 she sustained a right shoulder rotator cuff injury when she picked up and then placed a linen bag in a dumpster while in the performance of duty. She stopped work on the date of injury and was offered a temporary light-duty assignment within her work restrictions, effective June 25, 2020.

Appellant was seen on June 17, 2020 in the emergency room by Dr. John Teijido, a specialist in emergency medicine. Dr. Teijido noted that on that day appellant was dumping dirty linen carts when she felt a pull on her right shoulder. He related that x-ray of her right shoulder revealed mild degenerative changes. Dr. Teijido diagnosed sprain of the right shoulder.

In a report dated June 18, 2020, Dr. Lisa A. Sienkiewicz, a physician who specializes in orthopedic surgery, related that appellant had lifted a heavy laundry bin on June 16, 2020 and felt a pull on her right shoulder. She noted that x-rays of appellant's right shoulder revealed some arthritis. Dr. Sienkiewicz diagnosed right shoulder cuff tendinitis.

By decision dated July 29, 2020, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between her diagnosed conditions and the accepted employment incident of June 16, 2020.

On August 10, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on September 9, 2020.

In an undated report received by OWCP, on November 23, 2020, Dr. Sienkiewicz related that appellant sustained a right shoulder injury at work on June 16, 2020 when appellant lifted a heavy laundry bin and felt a pulling sensation on the lateral aspect of her right shoulder. She explained that a magnetic resonance imaging (MRI) scan obtained on September 9, 2020 showed a full-thickness rotator cuff tear and tendinitis of the long head of the biceps.

By decision dated December 22, 2020, the hearing representative vacated OWCP's July 29, 2020 decision and remanded the case for further medical development.

On November 18, 2020 appellant underwent right shoulder arthroscopic debridement and biceps tenotomy and arthroscopic rotator cuff repair.

On January 8, 2021 OWCP referred appellant to Dr. Mysore Shivaram, a Board-certified orthopedic surgeon, for a second opinion evaluation. It prepared a statement of accepted facts (SOAF), which related that appellant sustained a right shoulder injury when she took a dirty linen bag out of a cart to place in a dumpster. In a report dated February 11, 2021, Dr. Shivaram reviewed the medical record and the SOAF. He related that appellant's injury occurred when she placed a dirty linen bag, which she indicated was not heavy, into a dumpster. Dr. Shivaram noted

that she had preexisting right shoulder degenerative changes. Physical examination of appellant's right shoulder demonstrated well-healed scars, mild tenderness, flexion to 100 degrees, and abduction to 90 degrees. Dr. Shivaram diagnosed work-related right shoulder strain, degenerative arthritis of the right shoulder and acromioclavicular joint, and right rotator cuff tear. He related that the latter two diagnoses were nonwork related and preexisting in nature as they were highly unlikely to be due to the single event during which appellant lifted a laundry bag, which was not heavy. Dr. Shivaram noted that the period of total disability for her right shoulder sprain was six weeks, which was approximately August 1, 2020. He further explained that appellant's current disability is due to her chronic lower back pain and pain in both knees resulting from severe degenerative arthritis, and degenerative arthritis of the right shoulder.

By decision dated March 25, 2021, OWCP accepted the claim for right shoulder sprain, resolved as of August 1, 2020, based upon the second opinion report of Dr. Shivaram.

On April 6, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on July 6, 2021.

By decision dated August 26, 2021, OWCP's hearing representative affirmed the March 25, 2021 decision, finding that the medical evidence of record did not support appellant's having incurred more than a right shoulder sprain and/or disability beyond August 1, 2020 as a result of the accepted employment injury of June 16, 2020.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to expand the acceptance of the claim to include an additional right shoulder condition causally related to the accepted employment injury.

⁴ A.A., Docket No. 19-1165 (issued December 16, 2019); *M.B.*, Docket No. 19-0485 (issued August 22, 2019); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

Appellant was initially seen by Dr. Teijido on June 17, 2020 who diagnosed the accepted condition of right shoulder strain. While Dr. Teijido also noted that her right shoulder x-ray showed degenerative changes, he offered no opinion regarding the cause of her degenerative changes. His report was of no probative value as he did not offer an opinion on the issue of causal relationship. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.⁸

Appellant was thereafter seen by Dr. Sienkiewicz. In her report dated June 18, 2020, Dr. Sienkiewicz noted that x-rays of appellant's right shoulder revealed some arthritis and she diagnosed right shoulder cuff tendinitis. In her report received on November 23, 2020, she indicated that appellant sustained a right shoulder injury on June 16, 2020 when she lifted a heavy laundry bin. Dr. Sienkiewicz noted her review of an MRI scan of appellant's right shoulder which revealed a right shoulder rotator cuff tear and tendinitis of the long head of the biceps. However, these reports from her were of limited probative value as they provided an inaccurate history of injury and lacked a rationalized explanation of causal relationship. The Board notes that OWCP accepted that appellant lifted a dirty laundry bag out of a cart to place in a dumpster. The Board has previously explained that medical reports which contain an incorrect history of injury are of limited probative value.⁹ The Board further notes that Dr. Sienkiewicz did not provide a rationalized medical opinion explaining how the accepted incident physiologically caused appellant's diagnosed conditions.¹⁰ These reports were therefore insufficient to establish causal relationship.

Dr. Shivaram, serving as the second opinion examiner, opined in his February 11, 2021 report that appellant had preexisting right shoulder degenerative changes. He diagnosed work-related right shoulder strain, degenerative arthritis of the right shoulder and acromioclavicular joint, and right rotator cuff tear. Dr. Shivaram noted that the latter two diagnoses were nonwork related and preexisting in nature. He properly noted appellant's history of taking a dirty linen bag out of the cart to place in a dumpster. Regarding appellant's degenerative arthritis and rotator cuff tear, Dr. Shivaram noted that these conditions were preexisting and were highly unlikely to be due to the single event during which she lifted a laundry bag. Accordingly, the Board finds that OWCP properly relied on his second opinion report in finding that she had not established that her additional diagnosed conditions were causally related to the accepted employment injury.

As appellant has not submitted rationalized medical evidence to establish that the acceptance of her claim should be expanded to include additional right shoulder conditions as causally related to her June 16, 2020 employment injury, she has failed to meet her burden of proof.

⁸ See *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁹ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); see *J.M.*, Docket No. 17-1002 (issued August 22, 2017) (a medical opinion must reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions).

¹⁰ *Id.*

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.¹¹ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 1, 2020.

OWCP relied upon the report from second opinion physician, Dr. Shivaram, dated February 11, 2021 to find that appellant's disability had ceased as of August 1, 2020.

In a report dated February 11, 2021, Dr. Shivaram reviewed the medical record and the SOAF. He related that appellant's injury occurred when she placed a dirty linen bag, which she indicated was not heavy, into a dumpster. Dr. Shivaram noted that appellant had preexisting right shoulder degenerative changes. He diagnosed work-related right shoulder strain, degenerative arthritis of the right shoulder and acromioclavicular joint, and right rotator cuff tear. Dr. Shivaram opined that the period of total disability for her right shoulder sprain was six weeks, which was approximately August 1, 2020. He further explained that her current disability is due to her chronic lower back pain and pain in both knees resulting from severe degenerative arthritis, and degenerative arthritis of the right shoulder. No contrary evidence was received in response to Dr. Shivaram's February 11, 2021 report.

As Dr. Shivaram's report is well rationalized and based on examination and an accurate history of the employment injury, the Board finds that his report constitutes the weight of the medical evidence.¹³ OWCP therefore has met its burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include an additional right shoulder condition as causally related to her accepted June 16, 2020 employment injury. The Board further finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 1, 2020.

¹¹ See *M.E.*, Docket No. 20-0877 (issued August 2, 2021); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹² See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

¹³ See *B.B.*, Docket No. 20-1187 (issued November 18, 2021).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board